

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

WASEEM DAKER,

Plaintiff,

VS.

**COMMISSIONER HOMER
BRYSON *et al.*,**

Defendants.

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CASE NO.: 5:15-CV-88-CAR-CHW

ORDER

Presently pending before the Court is *pro se* Plaintiff Waseem Daker's motion for leave to appeal *in forma pauperis* (ECF No. 41) from the Court's February 2, 2017 Order (ECF No. 35) denying his motions for preliminary injunctive relief and his motion for limited service of process. Pursuant to 28 U.S.C. § 1915(a)(1), a court may authorize an appeal of a civil action or proceeding without prepayment of fees or security therefor if the putative appellant has filed "an affidavit that includes a statement of all assets" and "state[s] the nature of the . . . appeal and [the] affiant's belief that the person is entitled to redress."¹ If the trial court certifies in writing that the appeal is not taken in good faith,

¹Federal Rule of Appellate Procedure 24 similarly requires a party seeking leave to appeal *in forma pauperis* to file a motion and affidavit that establishes the party's inability to pay fees and costs, the party's belief that he is entitled to redress, and a statement of the issues which the party intends to present on appeal. Fed. R. App. P. 24(a).

however, such appeal may not be taken *in forma pauperis*. 28 U.S.C. § 1915(a)(3).² “Good faith” means that an issue exists on appeal that is not frivolous under an objective standard. See *Coppedge v. United States*, 369 U.S. 438, 445 (1962). “An issue is frivolous when it appears that ‘the legal theories are indisputably meritless.’” *Ghee v. Retailers Nat’l Bank*, 271 F. App’x 858, 859 (11th Cir. 2008) (per curiam) (quoting *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993)).

² The Court notes that the “three strikes” provision of the Prison Litigation Reform Act (“PLRA”) also prohibits a prisoner from “appeal[ing] a judgment in a civil action or proceeding” *in forma pauperis*

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Plaintiff has had more than three of his cases or appeals dismissed on the statutorily-enumerated grounds prior to filing his notice of appeal in this case: *Daker v. Mokwa*, Order Denying Leave to Proceed IFP, ECF No. 2 in Case No. 2:14-cv-00395-UA-MRW (C.D. Cal. Feb. 4, 2014) (denying leave to proceed *in forma pauperis* and dismissing case after conducting screening under 28 U.S.C. § 1915(e)(2)(B) and finding claims were frivolous and failed to state a claim upon which relief may be granted); *Daker v. Warren*, Order Dismissing Appeal, Case No. 13-11630 (11th Cir. Mar. 4, 2014) (three-judge panel dismissal of appeal on grounds that appeal was frivolous); Order Dismissing Appeal, *Daker v. Warden*, Case No. 15-13148 (11th Cir. May 26, 2016) (three-judge panel dismissing appeal as frivolous); Order Dismissing Appeal, *Daker v. Commissioner*, Case No. 15-11266 (11th Cir. Oct. 7, 2016) (three-judge panel dismissing appeal as frivolous); Order Dismissing Appeal, *Daker v. Ferrero*, Case No. 15-13176 (11th Cir. Nov. 3, 2016) (three-judge panel dismissing appeal as frivolous); Order Dismissing Appeal, *Daker v. Governor*, Case No. 15-13179 (11th Cir. Dec. 19, 2016) (three-judge panel dismissing appeal as frivolous). Plaintiff has therefore accrued more than three “strikes” for purposes of § 1915(g), and he is thus precluded from proceeding *in forma pauperis* on appeal unless he is presently in imminent danger of serious physical injury. In light of the Court’s finding that Plaintiff’s appeal is not taken in good faith, however, the Court finds it unnecessary to address whether Plaintiff has demonstrated that he falls within § 1915(g)’s imminent danger exception.

In this case, Plaintiff—an experienced *pro se* litigant who has filed dozens of appeals—does not provide a statement of the specific issues he intends to present on appeal in his motion for leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a)(1)(C). Upon reviewing the record, however, the Court finds no issues of arguable merit for appeal. Thus, for the reasons contained in the Court’s Order (ECF No. 35) and the Magistrate Judge’s Order and Recommendation (ECF No. 28), the Court finds that Plaintiff’s appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3). Plaintiff’s motion for leave to appeal IFP (ECF No. 41) is accordingly **DENIED**. If the Plaintiff wishes to proceed with his appeal, he must pay the entire \$505.00 appellate filing fee. Any further requests to proceed IFP on appeal should be directed, on motion, to the United States Court of Appeals for the Eleventh Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED, this 9th day of May, 2017.

S/ C. Ashley Royal
C. ASHLEY ROYAL, SENIOR JUDGE
UNITED STATES DISTRICT COURT